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In The
Supreme Court of the United States
October Term, 1989

SHELBY COUNTY SHERIFF AND MAYOR OF
SHELBY COUNTY, TENNESSEE,

Petitioners,

v.

LARRY LEACH,

Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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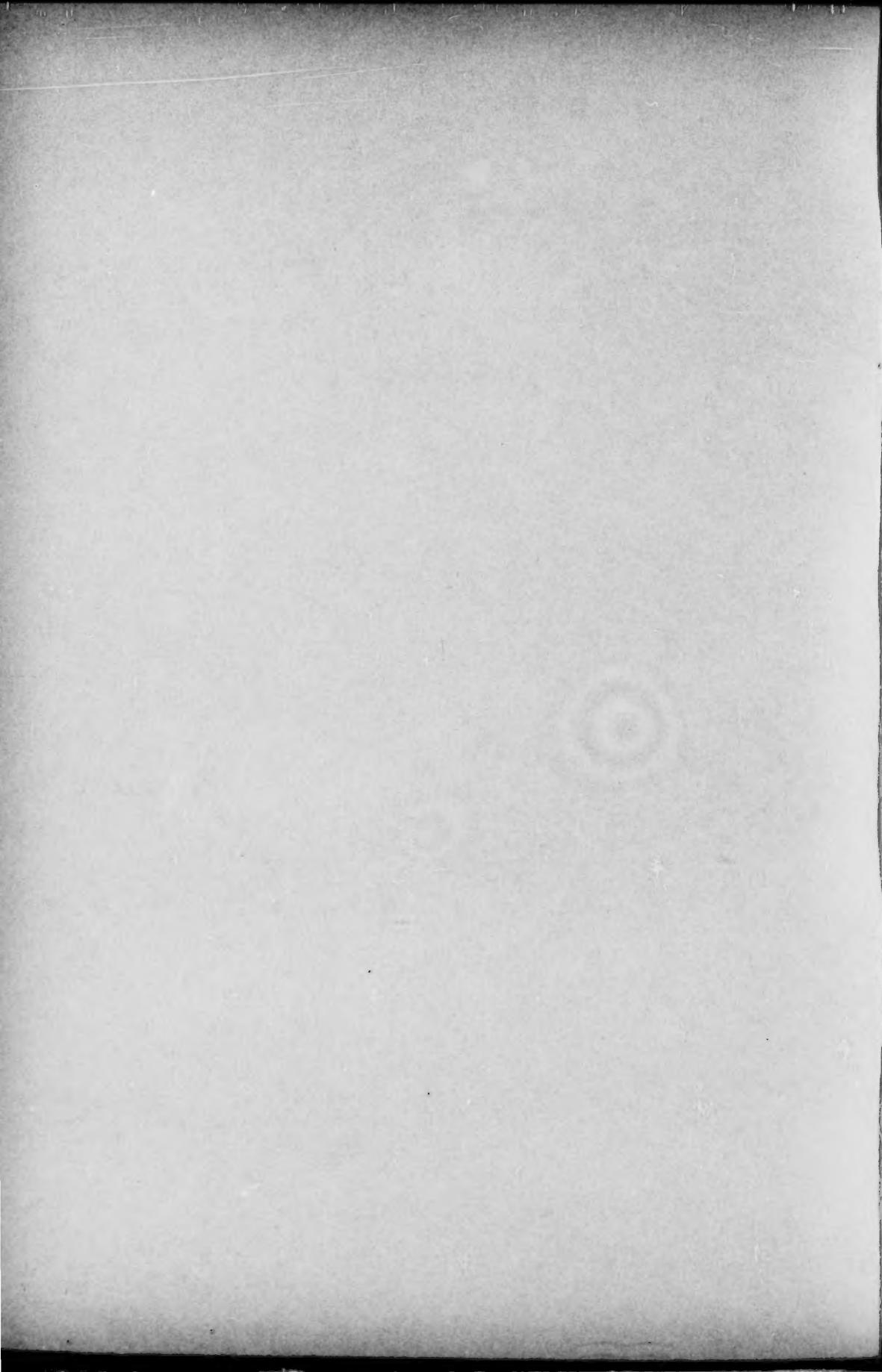


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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Larry Leach, submits this Brief in support of his request that this Court deny the Petition for Writ of Certiorari seeking review of the Decision and Opinion of the United States Court of Appeals for the Sixth Circuit filed on December 20, 1989.

STATEMENT OF THE CASE

This action arises from the deplorable and unconstitutional treatment received by respondent, Larry Leach, during the first ten days of his incarceration at the Shelby County Jail. Leach was shot during the commission of a felony and was paralyzed from his chest down. After being found guilty of aggravated rape and kidnapping, Leach was incarcerated at the Shelby County Jail to await sentencing.

Suit was filed in the United States District Court pursuant to 42 U.S.C. 1983 alleging conditions of respondent's incarceration violated his right to be free from cruel and unusual treatment. A trial on the merits of respondent's complaint was held before the Honorable Odell Horton, and the District Court found that injuries Leach suffered at the jail were the result of deliberate indifference to Leach's medical needs by jail personnel in violation of the Eighth Amendment of the United States Constitution. The Court further determined that there was evidence that other paraplegic or physically infirm inmates had been mistreated and that the Sheriff took no action to correct the situation or to discipline the employees involved. The trial court held that the Sheriff, in his official capacity, knew, or should have known, of the inferior and substandard treatment of paraplegics and that such treatment would deprive an individual of a constitutional right. The District Court awarded Leach the sum of \$10,000.00 against Shelby County Sheriff in his official capacity.

On appeal to the United States Court of Appeals for the Sixth Circuit, the petitioners contended that in connection with the facts involved in this case, there was no evidence of a "policy and custom" sufficient to establish official liability under *Monell v. New York Department of Social Services*, 436 U.S. 658 (1978).

The Court of Appeals for the Sixth Circuit agreed with the trial court that the deplorable maltreatment of respondent was the result of a policy and custom of the Sheriff:

Under the principle articulated in *Monell*, Leach must demonstrate that his maltreatment was the result of a policy or custom of the governmental entity. The policy involved here is one of deliberate indifference to the medical needs of paraplegic and physically incapacitated prisoners at the Shelby County Jail. The manifestation of this policy has two aspects: first, the Sheriff failed to supervise his employees adequately when he knew or should have known of the danger that the inmates such as Leach were likely to receive inadequate care and second, the Sheriff failed to investigate and punish those responsible, in effect ratifying their actions.

Leach v. Shelby County Sheriff, 891 F.2d 1241, 1247 (6th Cir. 1989).

The Court of Appeals found that there was no evidence that the Sheriff actually knew or supported the employees' actions toward respondent. Therefore, this is a situation where the Sheriff should have known and acted. Both the trial court and the Court of Appeals found that the Sheriff had an affirmative obligation towards Leach under Tennessee law to provide him with adequate

medical care, adequate food, and bedding, and to maintain cleanliness, toiletries and showers for respondent. Tenn. Code Ann. §§ 41-4-101, 41-4-119, 41-4-111. *Leach v. Sheriff, supra* at 1247.

The Court of Appeals also concluded that not only did state law impose an affirmative duty on the Sheriff to provide adequate care for respondent, but that there were enough similar incidents to put the Sheriff on constructive notice that Leach would be subjected to constitutional deprivation. *Id.* at 1247. The Court of Appeals held that the trial court's findings of fact concerning previous instances of inadequate and substandard care for paraplegic and physically infirm prisoners was adequately supported by the record and, therefore, not clearly erroneous. *Id.* at 1247.

On December 20, 1989, the judgment of the trial court was affirmed by the United States Court of Appeals. Further, the entire panel of the Court of Appeals denied the petitioners' Motion for Rehearing *En Banc*. The petitioners then filed this Petition for Writ of Certiorari.

SUMMARY OF ARGUMENT

The petitioners' main challenge in this case concerns the issue of whether the petitioners can be held liable for the deliberate indifference to the medical needs of respondent when there was no actual knowledge of the abuse in this particular instance. The petition should be denied since the Sheriff had an affirmative duty under Tennessee law to provide adequate care and, in fact, had constructive notice that respondent's care would be so

inadequate as to amount to a constitutional violation. Such findings are adequately supported by the record and as such are not clearly erroneous.

Additionally, petitioners' challenge concerns whether a municipality can be held liable for the failure to investigate and punish and, thereby ratify an unconstitutional policy when its officials had no actual knowledge of the specific acts that comprised the policy and custom. This basis for the Petition should also be rejected since there is sufficient evidence in the record to support the court's finding that the Sheriff had a duty to know and act, and in spite of his constructive knowledge of the deplorable treatment of paraplegics in the Shelby County Jail, the Sheriff took no action to correct the situation or to discipline the employees responsible for the mistreatment.

The petitioners ignore the clear findings of the District Court and the Court of Appeals that the Sheriff had an affirmative duty imposed by state law to provide for medical needs and adequate treatment of inmates at the jail. Petitioners also fail to recognize that the evidence establishes that the Sheriff should have known about the constitutional deprivation because of a pattern of prior similar abuse.

The decision of the Court of Appeals properly applied the *Monell* principles as recently refined by this Court in the *City of Canton v. Harris*, 109 S.Ct. 1197 (1989). The Court of Appeals held that "[g]iven the District Court's finding of deliberate indifference by the Sheriff in that at least fourteen paraplegics had received similar deplorable treatment, it is fair to say that the need for

more adequate supervision was so obvious and the likelihood of the inadequacy would result in the violation of constitutional rights was so great that the County as an entity can be held liable for the extent of Leach's determined damages." *Leach v. Sheriff, supra* at 1248. This decision of the Court of Appeals is in accordance with the principles of this Court as articulated in *Canton*.

ARGUMENT

THE RECORD SUPPORTS A FINDING THAT THE SHERIFF SHOULD HAVE KNOWN OF THE UNCONSTITUTIONAL CUSTOM AND POLICY OF DELIBERATE INDIFFERENCE TO THE NEEDS OF PARAPLEGIC INMATES.

The Court of Appeals found the existence of a policy and custom based upon the fact that the Sheriff should have known of the unconstitutional deprivation and that his failure to take action constituted a ratification of the unconstitutional deprivation. In their Petition for Writ of Certiorari, petitioners assert that there is no evidence that any of the fourteen paraplegics who received similar maltreatment filed a complaint which would have given the Sheriff constructive notice of the paraplegic mistreatment. Petitioners argue that the Court of Appeals held the Sheriff liable for failure to supervise and condoning actions about which he had no actual or constructive notice.

The petitioners' assertion ignores the fundamental obligations of the Sheriff under Tennessee law. The District Court found, and the Court of Appeals affirmed, the finding, that the Sheriff was under an affirmative duty

imposed by state law to know and act. The Sheriff is under an affirmative obligation to provide adequate medical care, food, bedding, and to maintain cleanliness, toiletries and showers for inmates. Tenn. Code Ann. §§ 41-4-101, 41-4-109, 41-4-111.

Additionally, the Court of Appeals found that not only was there a duty on the part of the Sheriff to provide adequate care to Leach, "but there had been enough similar incidents to put the Sheriff, in his official capacity, on notice that Leach would be subjected to constitutional deprivation." *Leach v. Sheriff, supra* at 1257. The Court of Appeals noted that there was evidence of numerous instances of abuse of paraplegic or physically infirm inmates and that the same type of treatment provided Leach was provided to at least fourteen other paraplegics. The Court concluded that, "these findings are adequately supported by the record here and are not clearly erroneous." Based upon these findings, the Court of Appeals agreed with the District Court's conclusion that the Sheriff was deliberately indifferent to Leach's needs while he was incarcerated in the Shelby County City Jail." *Leach v. Shelby County Sheriff, supra* at 1247.

Having determined that the evidence supported a finding that the Sheriff had constructive knowledge of the deliberate indifference, the Court of Appeals next examined the issue of whether the County can be held liable for damages when the failure to supervise employees amounts to deliberate indifference to the rights of persons incarcerated in jail. The Court of Appeals examined and followed the recent decision of this Court in *City of Canton v. Harris*, 109 S.Ct. 1197 (1989).

In *Canton*, this Court determined that there may be occasions when a municipality is liable for deprivations caused by the failure to adequately train officers or employees. The inadequacy of training may be a basis for liability when it is so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. *Canton v. Harris*, *Id.* at 1205. When that occurs, the failure to properly train may fairly be said to represent a policy for which the city may be liable if actual injuries occur. *Id.* at 1205.

The Court of Appeals concluded that this exact type of indifference was present in the instant case:

"Given the district court's finding of deliberate indifference by the Sheriff in that at least 14 other paraplegics had received similar deplorable treatment, it is fair to say that the need for more adequate supervision was so obvious and the likelihood that the inadequacy would result in the violation of constitutional rights was so great that the County as an entity can be held liable here for the extent of Leach's determined damages." *Leach v. Sheriff, supra* at 1248.

The reasoning of the Court of Appeals is completely consistent with this Court's previous decisions. The respondent respectfully submits the petition should be denied in that the Court of Appeals followed the principles of *Monell* and the *City of Canton v. Harris*.

THE EVIDENCE SUPPORTS THE FINDING THAT THE SHERIFF FAILED TO INVESTIGATE AND PUNISH THE RESPONSIBLE PARTIES AND THEREFORE RATIFIED THE UNCONSTITUTIONAL DEPRIVATION.

Petitioners also argue that the Petition should be granted to determine whether a municipality can ratify

an unconstitutional policy and custom when the Sheriff had no actual or constructive knowledge of the specific act. This assertion again ignores the factual findings of the District Court which were affirmed by the Court of Appeals. The Court of Appeals noted that "further evidence of the policy of deliberate indifference is found in the Sheriff's failure to investigate this incident and to punish the responsible parties." *Leach v. Shelby County Sheriff, supra* at 1258. This finding is clearly supported by the record. The District Court determined that under state law the Sheriff had a duty to supervise the medical treatment and care of prison inmates; therefore, in his official capacity, the Sheriff had a statutory duty to know and act to correct this constitutional deprivation.

The record also reflects that the Sheriff took no action to correct the situation nor to discipline the employees responsible for the mistreatment. *Id.* at 1258. Again, the petitioners quarrel with the basic findings of fact that the Sheriff has an affirmative duty to know of the available treatment and care and a duty to provide adequate medical care and treatment for inmates, and in those instances where treatment was totally inadequate, to correct the situations. The petitioners further ignore the finding that fourteen paraplegic or physically incapacitated inmates had received treatment similar to respondent prior to his incarceration. Accordingly, the finding of ratification is clearly supported by the record. Respondent respectfully submits that this asserted ground for grant of the Petition is without merit.

CONCLUSION

Petitioners argue that there is no evidence of actual or constructive knowledge of the unconstitutional custom or policy. As stated above, the record adequately supports a finding of constructive notice. Further, the petitioner completely ignores the fact that the Tennessee law imposes an affirmative duty on the Sheriff to know and act. These findings by the trial judge are adequately supported in the record and not clearly erroneous.

The Court of Appeals properly applied the principles articulated in *Monell* when it found that there was a policy of deliberate indifference to the medical needs of paraplegic and physically incapacitated prisoners. The policy was manifested by the Sheriff's failure to supervise his employees adequately when he knew or should have known that incapacitated inmates would receive inadequate care and when he failed to investigate the incident and punish the persons responsible or change the policy and procedure employed at the Shelby County Jail, the Sheriff, in effect, ratified these unconstitutional acts.

The Court of Appeals followed this Court's holding in *City of Canton v. Harris* that the inadequacy of training may serve as a basis for a § 1983 liability where the failure to train amounts to deliberate indifference to the rights of persons with whom the officers come into contact. The Court of Appeals concluded that the need to provide adequate supervision for paraplegics was so obvious in light of at least fourteen other paraplegics receiving similar deplorable treatment.

Accordingly, it is respectfully submitted that the Court of Appeals properly applied the law to the facts in the present case. Therefore, Respondent respectfully submits that the Court should deny the Petition for Writ of Certiorari.

Respectfully Submitted,

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